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Minutes of a Community Development Meeting held by the Town Board of the Town of Riverhead, held in the Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, on Tuesday, August 2, 1994, at 7:28 p.m.

Present:

Victor Prusinowski,	Councilman
James Stark,	Councilman and Deputy Supervisor
Frank Creighton,	Councilman
Harriet Gilliam,	Councilwoman

Also Present:

Barbara Grattan,	Town Clerk
Robert Kozakiewicz, Esq.,	Town Attorney
Andrea Lohneiss,	Director CDA

Absent:

Joseph F. Janoski,	Supervisor
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Deputy Supervisor Stark called the Community Development Agency meeting at 7:28 p.m.

First order of business, I ask the Board to approve the minutes of the CDA meeting of July 19, 1994."

Councilman Creighton: "So moved."

Councilwoman Gilliam: "And seconded."

Deputy Supervisor Stark: "It has been moved and seconded."

The Vote: Gilliam, yes; Creighton, yes; Prusinowski, yes; Stark, yes. The Minutes have been approved."

Deputy Supervisor Stark: "Let the record show that the time of 7:28 has arrived. Will the secretary of the CDA please read the notice of Public Hearing."

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Andrea Lohneiss: "NOTICE IS HEREBY GIVEN that the members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York (the "Agency") will meet at the Town of Riverhead, Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on August 2, 1994, at 7:15 o'clock p.m., prevailing time, for the purpose of conducting a Public Hearing on whether bonds should be issued by the Agency to provide financing to pay costs of the construction of an approximately 82,000 square foot aquarium and marine mammal/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility") and whether the Okeanos Ocean Research Foundation, Inc. a New York not-for-profit corporation ("Okeanos") should be designated the sponsor thereof. The estimated cost of said facility and capitalized interest and a debt service reserve fund on the bonds, hereinafter defined, and certain costs of issuance thereof, is \$60,000,000, for which the issuance of not exceeding \$58,000,000 bonds of the Agency (the "Bonds") would be authorized. It is proposed that Okeanos will occupy the facility and will acquire the facility from the agency after the bonds have been paid pursuant to a sale agreement. The Okeanos Aquarium, a New York Education Corporation, whose sole member is Okeanos ("Okeanos Aquarium") will operate the aquarium portion of the facility. Okeanos will operate the marine mammal/sea turtle rescue, rehabilitation and education center portion of the facility.

The bonds will be special obligation revenue bonds of the Agency payable solely from the revenues derived from the operation of the Facility, from certain ancillary activities of Okeanos, and from the sale, leasing or other disposition of the Facility, from general guarantees to be provided by Okeanos and Okeanos Aquarium and from a limited guarantee to be provided by the Town. It is intended that the interest on the bonds will be excludable from gross income for federal income tax purposes.

At said public hearing, the members of the Agency will hear all persons interested in the subject matter thereof. Approval of the issuance of the bonds by the Town through its Town Board is necessary solely in order for the interest on the bonds to qualify for exclusion from gross income from federal income tax purposes."

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Deputy Supervisor Stark: "Thank you, Andrea. At this particular time, I'd like to introduce our bond counsel, Thomas Rothman, from Wilkie, Farr who has been working very closely with the Town Board and Okeanos people on this particular project to see that this is going to be a success in Town. He will give a short summary or dissertation and then this hearing will be open for public comment. Tom?"

Tom Rothman: "Thank you, Mr. Stark, members of the Town Board, ladies and gentlemen.

On October 19th of 1993, the Town Board adopted what was called the East Main Street Urban Renewal Plan. The plan includes construction of the Okeanos Aquarium in the central business district urban renewal area of the Town. The construction of the facility it was determined or a facility similar to this facility will arrest and prevent conditions of deterioration or blight in the portion of the area in which the same is proposed to be located and is necessary for the overall redevelopment of the area, which entire area including the portion in which the facility is proposed to be located has been determined in the plan to be vastly underutilized.

Under the urban renewal law of the State of New York, the urban renewal agency or Community Development Agency as it is known in the Town of Riverhead, is entitled and authorized to cause the facility to be constructed, to designate the facility to be a demonstration project, and to designate the Okeanos Ocean Research Foundation Inc. the sponsor of the facility.

Under the urban renewal law, the urban renewal agency or Community Development Agency must hold a public hearing and listen to any citizen interested in the subject for their views on the subject. One of the two purposes of this hearing is for that purpose. The second purpose is a requirement of federal law. Under the Internal Revenue Code as amended in 1986, before a public benefit corporation of a town, such as the Town of Riverhead, can issue its obligations, the interest on which will be exempt from federal income taxation, the elected representatives of the Town must approve the project. This is not to say that they are guaranteeing the success of the project or the issuance of the Community Development Agency's bond. They must approve the project in concept. The intent of the Congress was that only those projects which an elected governmental body approves

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should be financed with obligation to the interest on which is exempt from federal income taxation. That is the second purpose of the hearing.

I am here to answer any technical questions you may have. After the public hearing, the Town Community Development Agency has before it several resolutions which if it deems appropriate, can adopt. The first resolution will be to designate the-- to determine that this project is, in fact, a demonstration project. Second will be to designate the Okeanos Ocean Research Foundation, Inc. as its-- as the sponsor of this particular project.

I think it's appropriate to at this time turn the floor over to a representative of Okeanos to present an overview of who Okeanos is, what they propose to do, and what the particular project is."

Deputy Supervisor Stark: "Thank you, Tom. Sam, will you be making that presentation? Ladies and gentlemen, this is Sam Sadove who is the (inaudible) I guess at Okeanos. No pun intended, Bob."

Sam Sadove: "First, I thank you for allowing me to come and speak for you and, hopefully, if there are any questions, I'll do the best I can to answer them. Basically what I'd like to do is give you a little of a brief history of Okeanos, and a little bit of information on the project itself and the overall schedule.

The Okeanos Foundation is a non-profit organization that was founded and incorporated in 1980 here on Long Island. Actually, at that time, a little known fact that it was in Jamesport so it was founded in the Town of Riverhead, although we are presently located on the south shore as many of you know.

When we were founded, our purposes were to conduct research and educational programs with regard to marine wildlife here in the New York area and to effect any positive changes we could have on that marine ecosystem. The work that we have done is primarily being located in New York. We have done some work outside of this area, but most of our work has been in this region.

Our work has been to try and increase the public's awareness about their resources and one of the ways we began to attempt to do that is conducting whale watching trips which many of you may have

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been on, hopefully, none of you have been seasick on. The foundation does conduct whale watching trips and that was initially our primary source of revenue. Over time, the organization expanded its function into more of the educational work that it does and other contract and grant work with regard to research and education programs on marine mammals and sea turtles and other marine wildlife.

We have been doing that since our founding, and we have now been around for, I guess it's 15 years. In 1982, we moved our offices down to Hampton Bays area and in the last few years we have been located on the Shinnecock Canal in Hampton Bays with an open public visitor center there.

We handle as many of you know, all stranded marine mammals and sea turtles and we have been handling an increasing number of them in New York State. The numbers and the animals that we handle are animals that are part of our wildlife and natural resources for New York, and are resources that many people initially did not recognize were here. Now, we believe most people begin to recognize at least that there are whales off our beaches, if not lots of other things.

The work that we've done over the last 15 years is-- it reached a point in our opinion where we could reach as much of an audience as we were reaching without going further and without getting people to recognize the value of their own back yard. That is partially where the idea of the aquarium project grew from.

It also grew from the request for schools and educational programs that we've had that we cannot fully fulfill at this point because we just don't have the space, facility or staff to do so. And the most appropriate way to do so is a facility such as an aquarium. We came up with the concept but had a unique twist to it, which is a concept now that most aquariums are attempting to meld into their plans, and that is to include the rehabilitation and rescue efforts as a part of the aquarium. To give people the opportunity not only to see species you would not normally see, but understand processes of wildlife and the environment that you don't get to see when you just go to the classic aquarium.

This will have a classic aquarium feature to it but we began that design. That design and idea had its infancy really in my son's birth with a gift of some land to us that turned out not to be possible to

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build any facility on. However, we began designing the plans for a facility at that time. We became more dedicated towards designing those plans in 1991 and '92, and put together after we recognized that although we think Okeanos can do a lot, it was in our best interests to get the people who were the best in the business to put together a very, very good facility. So we assembled a team of people who have designed and/or built most of the world's best aquariums, places such as Monterey, Chatanooga, Tampa, Camden and a number of other facilities throughout the United States as well as in Europe.

This team sat down with us, and we began to design this facility. And the picture you have before you here is of a model, of course, the building is not there right now. And it gives you an idea of what the facility's appearance is going to be. We are trying to keep within the architecture of Riverhead and not put a building that has five million angles going 20 different directions. We are trying to have a facility that also besides blending in with the area in Riverhead will do a great deal of benefit to the area in Riverhead.

Living in the Town of Riverhead, it is my interests to do that. And aquarium facilities built in the United States have ended up benefiting their communities in a great degree.

The process of designing it has taken about two years and we are almost done, not fully done. There are some exhibits still being moved around and some minor changes, but the majority of the design work is completed at this point in time. And the schedule is to begin construction in the fall of this year. It will complete construction and open to the public in May of 1997. To all residents of the Town of Riverhead, it will all, for all intents and purposes, look complete late in 1996. But it takes a period of time to get the building to have all the fish and everybody swimming around and living happily and not having anybody sick in the tanks.

So, that is our plan. If you have any questions, we will be glad to answer them, and I thank you for the opportunity."

Deputy Supervisor Stark: "Thank you, Sam. Is there anybody at this particular time that would like to make any comment on this particular public hearing tonight? Ken."

Ken Zahler: "We've-- you've had a number of meetings-- "

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Deputy Supervisor Stark: "Ken, would you just state your name and where-- your address, so we will have it for the record, please?"

Ken Zahler: "Ken Zahler, Aquebogue."

Deputy Supervisor Stark: "President of the School Board."

Ken Zahler: "Yes, President of the School Board. I'll start off-- I didn't know where to begin, but since you said that, I'll start off by just mentioning for the people that are present here today, that at a prior meeting, here in this room, I delivered a copy of resolution unanimously passed by the School Board, coming out in favor of the construction of the Okeanos Aquarium. It's a very exciting project. I can't say strongly enough how much I think this will help the Town of Riverhead.

A few weeks ago, walking along Main Street during Riverhead sale days, looking at the empty sidewalks, I couldn't help but think back in '64 and in '74, unlike in '94, Riverhead sale days had sidewalks that were so full you had to step out into the street in order to continue moving. I think you have an opportunity here with the approval of this aquarium to perhaps once again have a thriving downtown. The Tanger Outlet Center is terrific. Construction of another shopping center on 58 is nice. But neither of those nor anything else I could think of nor I doubt that anybody could think of, could have the effect on downtown Riverhead that this aquarium could have.

I don't think I overstate the-- I don't think I overstate the matter when I say that this may be the only opportunity that the Town Board of the Town of Riverhead has to truly turn things around downtown and I can't urge you strongly enough to support this.

And there is one other thing. As a member of the School Board, from time to time issues come up where different members feel different ways and it's clear that it will be approved, but perhaps not with a majority. And from time to time it becomes apparent to all members of the Board that for particular projects, for particular resolutions, it is important that they be unanimous. I think this is one of those occasions.

Thank you very much."

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Deputy Supervisor Stark: "Thank you, Kenny."

Councilman Creighton: "Jimmy, can I comment on-- "

Deputy Supervisor Stark: "Sure."

Councilman Creighton: "When Ken spoke the other night and again tonight, I'm reminded of the fundamental reason that your Town Board has considered these kinds of things in Riverhead, and it is so that we can create a commercial tax base with the kind of commercial development that is compatible with our quality of life and will, in fact, improve our quality of life.

Improving the-- increasing the commercial tax base will help us to continue to provide good education in our schools and the other things that are necessary for a quality of life, while not continuing to drain the residential taxpayer to pay for that. And that's really the basics and the bottom line on these kinds of things. Thank you."

Deputy Supervisor Stark: "Very good, thank you, Frank. Is there anybody else who would like to speak on this? Please feel free to come up. I know there are a couple Board members of Okeanos. If they would like to say something. Barry, please."

Barry Barth: "My name is Barry Barth. I have a business of Main Street in Riverhead and I'm also president of the Riverhead Business Improvement District. I spoke before this group at the Wading River Town Board meeting, and at that time, I delivered signatures from approximately 1,800 residents of the Town of Riverhead.

Mr. Zahler and Mr. Sadove have alluded to the fact that this project is critical to the business community. But what we wanted to show this Town Board was that the merchants-- the residents are behind this project and they hope that this Town Board will see fit to do whatever is necessary to secure the Okeanos project in Riverhead.

I know that this is a very, very critical decision. It certainly makes a commitment to this Town for a long period of time. I know that the business community and the residents will be behind you wholeheartedly and we hope that this will be a unanimous decision by all Board members to support this project. Thank you."

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Deputy Supervisor Stark: "Thank you, Barry. Is there anybody else that would like to comment on this particular portion? Steve."

Steve Haizlip: "Steve Haizlip of Calverton. The gentleman from the bond company mentioned about 1986 got an income, exemption status, and it was being a non-profit organization or facility. Now, Councilman Creighton mentioned about this-- after Mr. Zahler spoke, that this would be a valuable asset as far as the tax base. Now, most of these organizations that are tax exempt in federal status, aren't they usually exempt in school status as well?"

Deputy Supervisor Stark: "The Okeanos property would be a tax exempt property with exception of special district taxes, which is highway, lighting, parking district, sewer, water, et cetera. I think what Mr. Creighton has alluded to that it would be a great deal to the tax base of the Town of Riverhead, and you can correct me if I'm wrong, is the potential of the Okeanos Aquarium to bring in tourist dollars, they will come in spend it, and leave their children home or bring them for educational purposes, but then go home, is where Mr. Zahler does not have to keep raising his school budget up there which erodes our tax base."

Councilman Creighton: "We expect this to increase the value and the tax value of the properties throughout the central Riverhead area. And in so doing, as the tax base increases, the value of it, the tax revenues increase from that commercial source and as you increase revenues from the commercial tax base, you can either decrease or hold steady the taxes on the residential properties. And it's expected that not just from Okeanos which will pay, we're guessing about \$150,000 to the special districts that were mentioned, sewer, water, parking, fire, that sort of thing. But it's the additional taxes, the revenues that will be brought into town by the one million estimated tourists a year that will be coming to see the Aquarium."

Steve Haizlip: "Councilman Creighton, let me see if I can comprehend what you are saying is. We got a trailer that's sitting on a piece of land. Now, the trailer owner, he has to pay that landlord rent on that land for town services. So that will be more or less what is happening here. Police, fire, and-- on the property. And school services. Is that more or less what you are (inaudible) here?"

Councilman Creighton: "Everyone pays, you know, those taxes, both

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residential as well as the businesses in town. In this case, they do not pay-- a non-profit like this, will not pay to the school and to the general town."

Steve Haizlip: "Oh, okay."

Councilman Creighton: "-- taxes, but will pay all the other taxes. You make up that difference by the business that they will generate in the town, the additional business. Because the other businesses in town are not exempt from school and general town taxes."

Steve Haizlip: "All right. I think I got you."

Deputy Supervisor Stark: "Thank you, Steve. Yes, Tom."

Tom Rothman: "As a general matter, a 501C3 corporation such as Okeanos is exempt from real property taxes. As part of the consideration for the CDA's and the town's actions which you are going to be discussing this evening, Okeanos has agreed to enter into a agreement prior to closing and the issuance of bonds of a payment in lieu of taxes agreement. I think the two town staff members back there could each address, if you wish, the amount of-- or the classes of taxes or payments that they will be making to you. In effect, what this will be doing is producing revenues for you which if they had simply financed this and constructed on its own, they would not otherwise be paying to the town."

Deputy Supervisor Stark: "Rick, would you like to make any comment at this particular moment?"

Rick Hanley: "Rick Hanley, Planning Director. We went through the whole issue of the fiscal impact in the SEQRA record that we are going to be dealing with tonight as findings. One of the findings that was reached by this Board was that the existing tax bill on the property as improved today is something in the order of \$4,000, and that with the assessed value that's expected to be generated by the facility, we are talking about-- a total assessed value of about ten million with taxes paid to all special districts of about \$150,000. So there is a marked increase in the amount of taxes paid to the town, as well as the ripple effect that Frank talked about."

Deputy Supervisor Stark: "Thank you. Jack, do you have anything

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to add? Fine. Is there anybody else at this particular moment that would like to make any particular comment? Did you have your hand raised? I'm sorry, George. Please, George. I thought I saw something go up, and then I came back, it was down."

George Schmelzer: "Some of the questions have been answered already, by the last two speakers. I don't know much about this but I hear the town is guaranteeing \$10,000,000 in bonds?"

Councilman Prusinowski: "For five years."

George Schmelzer: "Five years."

Councilman Prusinowski: "For a number of years to be determined that the when the documents are fully prepared. Will not be more than 10 years and will not exceed \$10,000,000, or \$4,000,000 per year. The reason for that is that in order to secure a better interest rate to make the project work so that they can adequately service their debt service, they have asked us to participate this way and it will enable them to meet their objectives in their financial report so that when the Aquarium is operating, that they can meet their bond payments back to the bond holders."

When you are financing \$58,000,000, it's a tremendous difference if you pay seven and a quarter per cent interest or nine and a quarter per cent interest. And our participation is estimated can save them between fifteen and twenty million dollars over the course of the bonds."

George Schmelzer: "Which ten million is that? The first ten or the last ten?"

Councilman Prusinowski: "It's probably-- it's the first immediate years after the construction period."

George Schmelzer: "Maybe the Town Board can get some of the local banks to help out? Some of them might have special influence."

Deputy Supervisor Stark: "They have sought out their financing and-- okay?"

George Schmelzer: "You know what I mean?"

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Deputy Supervisor Stark: "Yes, sir. Thank you, George."

George Schmelzer: "With this-- I'm not sure, you mean, if they can't pay their bills on time, Riverhead will have to pay, huh? Up to \$10,000,000?"

Councilman Prusinowski: "Up to four and a half million per year."

George Schmelzer: "Oh, for 10 years?"

Councilman Prusinowski: "Once-- it's only \$10,000,000."

Deputy Supervisor Stark: "Tom, would you like to come up and comment on that?"

Councilman Prusinowski: "Yes, Tom will explain."

Deputy Supervisor Stark: "Thank you. George, if you will just have seat for a second. He will walk up to the microphone so everybody could see him and listen to him."

George Schmelzer: "Okay."

Deputy Supervisor Stark: "Sit down for a second and then you'll come right back up. Thank you."

Tom Rothman: "After the Town Board reconvenes, there will be a resolution presented to it to authorize the Town's guarantee of not more in aggregate of principal and interest for not in excess of a 10 year period, \$10,000,000 of the Community Development Agency's obligations. Under the indenture that we have written that is not finalized yet, we have a flow of funds and if you think of that as a big funnel with the dollars generated by the Aquarium and the other assets of Okeanos pledged to this project going into the top. First out of that funnel comes operation and maintenance expenses. Then comes debt service expenses. To the extent that the revenues do not provide sufficient monies to pay debt service expenses, that's after the payment of operating and maintenance expenses, you then go to the various funds held by the Trustee for the benefit of the bondholders, including a one year debt service reserve fund. There will also be various other operating reserve funds and rebuilding funds that are funded annually by Okeanos. And those funds will all have to be exhausted

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before the Town's guarantee is called upon. Additionally, both Okeanos Foundation and Okeanos Aquarium will be guaranteeing the bonds. Only after their guarantees have been exhausted, will the Town's guarantee be called upon.

What Vic was saying was that there is a three year construction period. For that three year construction period, there will be funds set aside and held by the Trustee sufficient to pay interest on the obligations coming due during that period. There will not be any principal coming due during that period. There will be a one year debt service reserve fund. So for the first three years, debt service is paid by monies held by the Trustee. There is one year of monies held by the Trustee as well. So, if the facility was never opened for some reason and never produced a nickel in income, the first four years of debt service are provided for in funds held by the Trustee.

Assuming that we go past that period which, of course, everybody anticipates that will be the case, then you should know that Okeanos proposes to enter into a guaranteed cost construction contract with a major contractor in the United States who is quite reputable I might add. Assuming that the project opens on time, which we anticipate it will, on schedule and at cost, the project will produce revenues. In effect, what the Town Board is doing, is agreeing to a deficiency payment contract that during this period of the guarantee for any unanticipated reason, sufficient revenues are not available to pay debt service on the bonds, the Town will do so. That is specifically authorized by Article 18 Section 4 of the New York State Constitution. In the event that the project continues to operate, the first payback after that year's debt service will be to reimburse the Town for any monies advanced.

A feasibility study has been done-- has been performed on this by Arthur Anderson & Co., which shows that if their assumptions which they believe are valid assumptions are correct, that the facility will more than pay for itself and the Town Board will not have to pay under the guarantee. The purpose of the guarantee or the request for the guarantee was brought to the Town Board by Okeanos on advice of their financial advisers who said that the securities were unrated as any securities for a new corporation, first time market issue are for almost anyone, and that the Town's guarantee could save very, very significant interest dollars over the life of the bonds, thereby assuring the success of the transaction and that is the reason I

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believe the Town Board is entertaining the concept of the guarantee."

Deputy Supervisor Stark: "Thank you, Thomas. Joe Fischer please."

Joe Fischer: "George, did that answer your question?"

George Schmelzer: "Yes, for the most part, not everything, but-- "

Deputy Supervisor Stark: "Okay, thank you."

Joe Fischer: "My name is Joe Fischer. I live in Aquebogue. I own a business on Main Street, Big and Better Brains, and in the past I've been here as the president of the Riverhead Merchants Association, and our association has urged the Board to support this project in whatever means are necessary to bring it to fruition.

In recent times, we've done nothing with our organization, although I don't represent the group tonight, to change the opinion of the local businesses. We think this is a positive for Riverhead. We recently submitted petitions at the last Board Meeting which we collected at various businesses. The only negative commentary that we received from the local people was the culture shock reaction, what you mean it may not come to Riverhead? It may not happen? I think that's also evident whenever there has been any hearings or demonstrations on Okeanos generally the public does not come out anymore because they are just waiting for it to be built. They expect it to happen.

I don't think we've ever heard any negative comments to bring this to town. The town has already seen the positives of this operation in Okeanos in that Riverhead's perception has changed in the public view around the area. Riverhead is the up community. It's the place to be. If only half the rumors on the street are true about businesses don't want to come to town, I hope those that are tenants and paying rent in town can still afford it when the new businesses come to town because of Okeanos. They are waiting for that shovel to (inaudible) the ground. So as a private citizen, I urge the Board to unanimously pass the resolution to bring this to fruition. Thank you."

Deputy Supervisor Stark: "Appreciate that. Anybody else that would like to be heard on this particular aspect of the public hearing at this particular moment? If not, I will declare the Public Hearing closed."

Public Hearing closed: 8:00 p.m.

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Deputy Supervisor Stark: "I would ask that bond counsel, Tom, come up and explain the resolution that we are about to adopt."

Tom Rothman: "The resolution-- "

Deputy Supervisor Stark: "Resolution No. 4."

Tom Rothman: "The resolution would determine that the construction of the Aquarium that you have heard described to be constructed on land to be acquired on East Main Street in the urban renewal area of the Town, is a demonstration project of the Community Development Agency. It designates the Okeanos Research-- I'm sorry, the Okeanos Ocean Research Foundation Inc. is the sponsor of this particular project. The CDA would take official action towards the issuance of revenue bonds and what that means is under the Internal Revenue Code in order for expense of Okeanos committed at a specified date to be reimbursed through tax exempt bonds, the issuer of the obligations, the public benefit corporation, has to take what is termed official action under the code, and this resolution takes that, and authorizes the execution and delivery of an agreement by and between the agency and Okeanos with respect to the acquisition of the land and the construction of the project."

Deputy Supervisor Stark: "Yes, thank you, Tom. I would ask Councilman Prusinowski to entertain this resolution."

Councilman Prusinowski: "Okay, I move Resolution No. 4, Community Development Agency. So moved."

Deputy Supervisor Stark: "Is there a second to this resolution?"

Councilwoman Gilliam: "And seconded."

Deputy Supervisor Stark: "It has been moved and seconded by Councilwoman Gilliam. On the second, would the secretary of the Community Development Agency please call the roll."

The Vote: Gilliam, yes; Creighton, yes; Prusinowski, yes; Stark, yes. The Resolution is adopted.

Deputy Supervisor Stark: "If there is no other discussion by the members of the CDA Board, I would entertain a motion for this

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meeting to be adjourned."

Councilman Prusinowski: "So moved."

Councilman Creighton: "And seconded."

Deputy Supervisor Stark: "Moved and seconded."

Deputy Supervisor Stark: "Without objection, I'll do it by acclamation."

Meeting closed: 8:03 p.m.

*Barbara Quatten
Town Clerk*

TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
Resolution # 4

4719/0971

At a special meeting of the Members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, held at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on August 2, 1994, at 7:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Member Stark, and upon roll being called, the following were

PRESENT:

Member James R. Stark
Member Victor J. Prusinowski
Member Frank W. Creighton
Member Harriet A. Gilliam

ABSENT:

Chairman Joseph F. Janoski

The following resolution was offered by Member Prusinowski who moved its adoption, seconded by Member Stark, to-wit:

RESOLUTION DATED AUGUST 2, 1994.

A RESOLUTION DETERMINING THE CONSTRUCTION OF AN APPROXIMATELY 82,000 SQUARE FOOT AQUARIUM AND MARINE MAMMAL/SEA TURTLE RESCUE, REHABILITATION AND EDUCATION CENTER AND THE ACQUISITION OF LAND LOCATED ON EAST MAIN STREET, IN RIVERHEAD, NEW YORK, INCLUDING ORIGINAL FURNISHINGS, EQUIPMENT, MACHINERY, APPARATUS, APPURTENANCES AND INCIDENTAL IMPROVEMENTS AND EXPENSES IN CONNECTION THEREWITH, TO BE A DEMONSTRATION PROJECT, DESIGNATING THE OKEANOS RESEARCH FOUNDATION, INC. AS THE SPONSOR THEREOF, TAKING OFFICIAL ACTION TOWARDS THE ISSUANCE OF REVENUE BONDS TO PAY COSTS THEREOF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND OKEANOS WITH RESPECT THERETO.

WHEREAS, by Articles 15 and 15-A, and Section 680-c of Article 15-B, of the General Municipal Law of the State of New York, as amended (collectively, the "Act"), the Town of Riverhead Community Development Agency (the "Agency") was created with the authority and power to, among other things, acquire, construct, reconstruct and equip certain projects in accordance with the Act and to issue its revenue bonds to pay costs of such projects;

WHEREAS, there has been submitted to the Agency a proposal for, and the Agency is considering, (i) the construction of an approximately 82,000 square foot aquarium and marine mammal/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street, in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility"), (ii) authorizing the issuance of not exceeding \$58,000,000 bonds of the Agency (the "Bonds") to provide financing to pay costs of the Facility and capitalized interest and a debt service reserve fund on the Bonds and certain costs of issuance thereof, (iii) designating the

Okeanos Ocean Research Foundation, Inc., a New York not-for-profit corporation, the "qualified and eligible sponsor", pursuant to Sections 556(2) and 507(2)(c) of the General Municipal Law and in accordance with established rules and procedures prescribed by the Agency (the "Sponsor"), of the Facility and (iv) entering into a sale agreement by and between the Agency and Okeanos pursuant to which Okeanos will occupy the Facility and will acquire the Facility from the Agency after the Bonds have been paid; and

WHEREAS, the Town of Riverhead (the "Town"), on October 19, 1993, adopted the East Main Street Urban Renewal Plan (the "Plan"), which Plan includes the construction of the Facility in the Central Business District Urban Renewal Area of the Town (the "Area"); and

WHEREAS, the construction of the Facility will arrest and prevent conditions of deterioration or blight in the portion of the Area in which the same is proposed to be located and is necessary for the overall redevelopment of the Area, which entire Area, including the portion in which the Facility is proposed to be located, has been determined in the Plan to be vastly under utilized; and

WHEREAS, the Town, pursuant to Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder by the State Department of Environmental Conservation ("SEQRA") declared itself "lead agency" for acquisition, construction, equipping and financing of the Facility, and the Town has concluded its SEQRA analysis with respect to the Facility and has adopted its SEQRA "findings" with respect to the Facility; and

WHEREAS, the Agency has designated itself "lead agency" for its financing of the Facility, has declared that the "Action" is a "Type I" Action, has prepared and filed an Environmental Assessment Form with respect to its financing of the Facility and has determined that such financing, as proposed, will not result in any significant environmental effects; and

WHEREAS, pursuant to Section 556(2) and 507(2)(c) of the General Municipal Law, the Agency, on August 2, 1994, at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, held a public hearing in connection with designating Okeanos the Sponsor of the Facility; and

WHEREAS, prior to contacting the Agency, Okeanos submitted an application for financial assistance for the Facility to the Suffolk County Industrial Development Agency, which Agency, on April 20, 1993, adopted a Preliminary Inducement Resolution for a tax-exempt civic facility bond in the amount of \$20,000,000; and

WHEREAS, based upon information provided to the Agency by Okeanos, the Plan, the Town's SEQRA analysis and findings, the Agency's SEQRA negative declaration and the information provided at the public hearing, (collectively, the "Review") the Agency now desires to determine the Facility to be a "demonstration project" of the Agency, pursuant to Section 554 of the General Municipal Law (a "Demonstration Project"), designate Okeanos the Sponsor of the Facility, take official action towards the issuance of the Bonds and authorize the execution and delivery of an Agreement between the Agency and Okeanos with respect to the Facility;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the Review, the Agency hereby finds and determines that the Facility, as proposed, will arrest and prevent conditions of deterioration or blight in the portion of the Area in which it is proposed to be located, is necessary for the overall redevelopment of the Area, will demonstrate the creative reuse of a portion of the Town's Central Business District, and of the waterfront in particular, from a vastly under utilized use as a lumber yard to a highly productive use as a tourist destination and nationally known marine mammal/sea turtle rehabilitation and education center and is a Demonstration Project.

Section 2. Based upon the Review, the Agency hereby designates Okeanos the Sponsor of the Facility.

Section 3. Subject to the conditions set forth in Section 4 of this Resolution, the Agency will issue the Bonds in such principal amount not exceeding \$58,000,000 and with such maturities, interest rate or rates, redemption terms and other terms and provisions as shall be determined by a further resolution of the Agency, and secure the Bonds in such manner as the Agency, Okeanos and the purchaser(s) of the Bonds mutually shall deem appropriate.

Section 4. The issuance of the Bonds shall be subject to, among other things, (i) agreement by the Agency, Okeanos and the purchaser(s) of the Bonds upon mutually acceptable terms for the

Bonds, including terms and conditions relating to security for the payment thereof, and for the sale and delivery thereof, and (ii) the issuance of the approving opinion by Willkie Farr & Gallagher as bond counsel to the Agency, in form and substance satisfactory to the Agency and to the purchaser(s) of the Bonds.

Section 5. Subject to the execution and delivery by Okeanos of the agreement referred to in Section 7 hereof, Okeanos is appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings or instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the acquisition, construction and equipping of the Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

Section 6. Okeanos may proceed with the acquisition, construction and equipping of the Facility and advance such of its own funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Agency agrees to reimburse Okeanos therefor out of the proceeds of the Bonds.

Section 7. The form and substance of the proposed agreement (in substantially the form presented to this meeting and attached hereto as Exhibit A) between the Agency and Okeanos setting forth the undertakings of the Agency and Okeanos with respect to the issuance of the Bonds and the providing of the Facility (the "Agreement") are hereby approved. The Chairman of the Agency is

hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.

Section 8. Counsel to the Agency and Willkie Farr & Gallagher, bond counsel to the Agency, are hereby authorized to work with the purchaser(s) of the Bonds, Okeanos and others to prepare, for submission to the Agency, all documents necessary to effect the authorization, issuance and sale of the Bonds.

Section 9. The Chairman of the Agency is hereby authorized and directed to distribute copies of this Resolution to Okeanos and to do such further things and perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

<u>Member Stark</u>	VOTING	_____
<u>Member Prusinowski</u>	VOTING	_____
<u>Member Creighton</u>	VOTING	_____
<u>Member Gilliam</u>	VOTING	_____
_____	VOTING	_____
_____	VOTING	_____

The resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, the undersigned Secretary of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, DO HEREBY CERTIFY:

1) That I have compared the annexed extract of the minutes of the meeting of the Members of said Agency, including the resolution contained therein, held on August 2, 1994, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to; and

2) The Agreement annexed hereto as Exhibit A is in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that all Members of said Agency had due notice of said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

I FURTHER CERTIFY that, PRIOR to the time of said meeting, I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

Newspaper and/or other news media

Date given

The Suffolk County Life

I FURTHER CERTIFY that PRIOR to the time of said meeting, I duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

Designated Location(s)
of posted notice

Date of Posting

Town Hall
200 Howell Avenue
Riverhead, NY 11901

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency on August 24, 1994.

Andrea Lohneiss
ANDREA LÖHNEISS

(CORPORATE
SEAL)

EXHIBIT A

AGREEMENT

THIS AGREEMENT is between the Town of Riverhead Community Development Agency (the "Agency") and Okeanos Ocean Research Foundation, Inc. ("Okeanos").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Articles 15 and 15-A and Section 680-c of Article 15-B of the General Municipal Law of the State of New York (the "State"), as amended, (collectively, the "Act") to issue its special obligation revenue bonds for the purpose of financing certain projects and to sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. Okeanos has requested that the Agency provide for the construction of an approximately 82,000 square foot aquarium and marine mammal/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street, in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility"), and authorize the issuance of not exceeding \$58,000,000 bonds of the Agency (the "Bonds") to provide financing to pay costs of the Facility and capitalized interest and a debt service reserve fund on the Bonds and certain costs of issuance thereof, and sell the Facility to Okeanos after the Bonds have been paid pursuant to a sale agreement.

1.03. The Agency has determined that the Facility is a Demonstration Project, as provided in the Act, and the issuance of Bonds of the Agency and the sale of the Facility to Okeanos will promote and further the purposes of the Act.

1.04. On August 2, 1994, the Agency adopted a resolution agreeing, subject to the satisfaction of all conditions precedent set forth in such resolution, to issue and sell the Bonds.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of Okeanos and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency will authorize and use its best efforts to issue, sell and deliver the Bonds, pursuant to the Act as then in effect.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the authorization, issuance, sale and delivery of the Bonds, (ii) the acquisition, construction, and equipping of the Facility, and (iii) the sale of the Facility to Okeanos, all as shall be authorized by law and be mutually satisfactory to the Agency, Okeanos and the purchaser(s) of the Bonds.

2.03. The Agency will enter into an agreement to sell the Facility to Okeanos (the "Financing Agreement"). The Financing Agreement shall obligate Okeanos to make aggregate basic payments in an amount at least sufficient to pay the principal of, premium, if any, and interest on the Bonds as and when the same shall become due and payable, plus such additional amounts as shall be prescribed in the Financing Agreement. Okeanos shall acquire from the Agency title to the Facility for an aggregate amount equal to the amount required to retire the Bonds, plus such additional amounts as shall be prescribed in the Financing Agreement. The Financing Agreement shall contain all provisions required by law and such other provisions as shall be mutually satisfactory to the Agency, Okeanos and the purchaser(s) of the Bonds.

2.04. Okeanos may proceed with the acquisition, construction and equipping of the Facility and advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Agency agrees to reimburse Okeanos therefor from the proceeds of the Bonds.

2.05. Subject to Section 4.02 hereof, Okeanos is appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of Okeanos. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, Okeanos agrees as follows:

3.01. Okeanos will use all reasonable efforts to find or cause to be found one or more purchasers for the Bonds.

3.02. Contemporaneously with the delivery of the Bonds, Okeanos will enter into the Financing Agreement with the Agency

containing the terms and conditions described in Section 2.03 hereof.

3.03. (a) Okeanos shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on (i) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition, construction and equipping of the Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of Okeanos acting as agent for the Agency pursuant to this Agreement or otherwise, or (ii) any untrue statement or alleged untrue statement of a material fact included in any written materials relating to the offering or sale of the Bonds or the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) Okeanos shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Facility.

(c) Okeanos shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) Okeanos shall purchase and maintain public liability insurance with respect to the Facility in an amount approved by the Agency and shall include the Agency as a named insured under all such public liability insurance policies obtained by Okeanos with respect to the Facility.

3.04. Okeanos agrees that, to the extent required by law, it will comply with the requirements of the Labor Law, the Executive Law and the Civil Rights Law of the State.

3.05. Okeanos will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.06. If no Bonds have been issued within one year of the date of completion of the acquisition, construction and equipping of the Facility, Okeanos will pay to the appropriate taxing jurisdiction whatever amounts would have been due with respect to the Facility if Okeanos had not been appointed agent of the Agency

pursuant to Section 2.05 hereof, including without limitation any sales taxes and any real property taxes and assessments (less any payments in lieu of taxes made by Okeanos).

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and Okeanos.

4.02. It is understood and agreed by the Agency and Okeanos that the issuance of the Bonds and the execution of the Financing Agreement and related documents are subject to (i) obtaining all necessary governmental approvals, (ii) approval by the appropriate bodies of the Agency and Okeanos and (iii) agreement by the Agency, Okeanos and the purchaser(s) of the Bonds upon mutually satisfactory terms for the Bonds and for the sale and delivery thereof and mutually satisfactory terms and conditions for the Financing Agreement.

4.03. Okeanos agrees that it will (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation, the fees and expenses of Willkie Farr & Gallagher, bond counsel to the Agency, and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. This Agreement may be terminated, at the option of either party hereto, on or after one year from the date hereof upon delivery of prior written notice thereof to the other party; provided, however, that in such event Okeanos's obligations under Sections 3.03, 3.06 and 4.03 hereof shall survive any such termination.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on this ____ day of August, 1994.

TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: _____
Chairman

OKEANOS OCEAN RESEARCH FOUNDATION, INC.

By: _____